

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Revision of Part 22 and Part 90 of the)
Commission's Rules to Facilitate Future)
Development of Paging Systems)

Implementation of Section 309(j))
of the Communications Act --)
Competitive Bidding)

WT Docket No. 96-18

PP Docket No. 93-253

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**COMMENTS
OF
CONSOLIDATED COMMUNICATIONS MOBILE SERVICES, INC.**

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March 18, 1996

SUMMARY

In these Comments, Consolidated Communications Mobile Services, Inc. ("CCMS") urges the Commission to abandon its geographic licensing/auction proposals for lower band paging services. CCMS believes that the present site-by-site approach has worked reasonably well in the lower bands. Most important the geographic licensing/auctions proposal will threaten the viability of small and mid-sized paging operators. The auction environment has not proven to be hospitable to those without very significant resources.

If the Commission proceeds with the proposals despite CCMS' opposition, then some modifications should be made to preserve opportunities for small and mid-sized operators. First, the BTA should be the geographic market area. Second, incumbents should be given some opportunity for growth and, finally, incumbents must be given effective protection against interference.

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**COMMENTS
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Consolidated Communications Mobile Services, Inc. ("CCMS"), by its attorneys, hereby submits these comments on the proposals made by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding.¹ CCMS is the licensee of a paging system providing service in Central Illinois and parts of Indiana. CCMS is opposed to the proposals advanced by the Commission. We believe they artificially create licensing conflicts in the lower band where none have existed before. CCMS urges the Commission to abandon its proposals as unnecessary and intrusive.

¹ On February 14, 1996, CCMS filed pro forma applications to effect a corporate restructuring. After grant of these applications, CCMS will be merged into a successor company which will hold FCC paging licenses. That company will be known as Consolidated Communications Telecom Services, Inc. ("CCTS").

I. INTRODUCTION AND BACKGROUND

A. CCMS

Consolidated Communications Mobile Services is a wholly-owned subsidiary of Consolidated Communications, Inc. ("CCI"), a mid-sized communications company headquartered in Mattoon, Illinois. CCI has a number of other subsidiaries, including Illinois Consolidated Telephone Company which recently celebrated the centennial anniversary of its providing service in Central Illinois.

The paging operations of CCMS cover a service area in three Major Trading Areas (Chicago, Indianapolis and St. Louis) and nine Basic Trading Areas (Bloomington, Champaign, Danville, Decatur, Jacksonville, Mattoon, Mount Vernon, Springfield and Terra Haute). CCMS operates its paging service at 158.1 MHz, providing service in rural and suburban areas of Illinois and Indiana.

The annual operating revenues of CCMS are very low compared with the annual operating revenues of paging service providers in the same MTA operating at 158.1 MHz, such as Ameritech, MobileMedia and GTE. Despite its small size, the paging service provided by CCMS is an integral part of both CCI and the Central Illinois community. It provides service to most of the hospital, ambulance and fire providers in its service area and, we believe, is the only provider of voice paging services to that emergency community. Nevertheless, in the battle of resources known as auctions, CCMS would not be able to bid successfully against its competitors within the Chicago MTA.

B. The NPRM

On February 9, 1996 the Commission released a Notice of Proposed Rulemaking in this Docket.² That NPRM makes proposals for the future of paging services in this country, in order to "promote continued growth and preserve vigorous

² Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems; Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Notice of Proposed Rulemaking, FCC 96-52, February 9, 1996 ("NPRM").

competition". The Commission proposes to institute a geographic licensing scheme wherein single licenses would be issued for large geographic areas, specifically the Rand McNally Commercial Atlas Major Trading Areas ("MTA"). This geographic licensing proposal would replace the current method of licensing on a site-by-site basis. The Commission also proposes to adopt competitive bidding (auction) rules for mutually exclusive paging applications.

However, the Commission recognized that any proposal to change paging licensing procedures would have to take into account the large number of paging systems already licensed and operating under site-specific authorizations.³ In some cases, of course,

these existing licensees will seek and obtain geographic licenses for areas where they already operate, enabling them to consolidate and expand their operations under a more flexible regulatory regime.⁴

However, in those cases where the incumbent does not obtain the geographic license, some protection of its rights under existing authorizations is essential. Therefore, the Commission proposed to allow continued operation under existing authorizations with full protection from interference.⁵ Further, the NPRM suggests that geographic licensees could enter into negotiations with respect to the purchase or relocation of incumbent's facilities. Indeed, if an incumbent wanted to "sell out" to a geographic licensee the Commission would presume the transfer or assignment to be within the public interest.

CCMS does not want to "sell out". It wants to continue to provide excellent service to the public. Because we see our opportunity to continue as a

³ NPRM, ¶ 22.

⁴ Id.

⁵ Id.

paging operator substantially threatened by the NPRM, we strongly oppose the Commission's proposals.

II. ARGUMENT

A. The Commission Should Not Adopt the Geographic Licensing/Auctions Proposal for Lower Band Paging.

CCMS believes that it would be a grave mistake to adopt the geographic licensing/auctions proposal for lower band paging services. CCMS does not perceive a need for the proposal, but does see how it can seriously jeopardize the viability of small and mid-sized paging operators.

1. The present site-by-site approach has worked reasonably well.

As the Commission recognizes, the VHF and UHF paging channels in the 152 and 454 MHz bands (known as the "lower bands") have been available for licensing the longest and are more heavily licensed than the 931 MHz band.⁶ There is relatively "little desirable spectrum that remains available for licensing on these channels", as the NPRM notes.⁷

Perhaps as a result of this, lower band applications are not subject to the problems associated with 931 MHz applications where "the number of applications often exceeds the number of available channels."⁸ Nor do lower band applications suffer from the years-long backlog that plagues 931 MHz applications.

Indeed, the present site-by-site approach works reasonably well. CCMS has not, in recent memory, ever been faced with a mutually exclusive or contested application. Nor have delays in processing occurred as a result of the Commission's

⁶ NPRM, ¶ 13.

⁷ Id.

⁸ NPRM, ¶ 10.

administrative problems. As a result, CCMS has been able to build a vibrant system serving rural and suburban areas.

Moreover, the Commission itself has recognized that geographic licensing/auctions may not be necessary or desirable for lower band paging services. The NPRM implies that geographic licensing may not be practicable in all bands.⁹ More interestingly, the Part 22 Rewrite Order specifically questioned whether "market area" licensing would be workable for Paging and Radio Telephone Services other than 931 MHz paging stations.¹⁰ Perhaps the Commission recognized then, as it should now, that the problems associated with lower band auctions would severely damage the industry.

2. The Geographic Licensing/Auctions Proposal will threaten the viability of small and mid-sized paging operators.

CCMS has looked carefully at the Commission's proposal for geographic licensing and auctions and has concluded that it presents a very serious threat to CCMS' continued operations for several reasons.

First, as a general matter, experience with competitive bidding does not bode well for any company without deep pockets. Although all the votes have not been counted, it certainly does not appear that small business interests are prevailing in the on-going auction for C Block PCS licenses, which as of this writing has reached the \$8 billion level. Anecdotal evidence suggests that small companies who entered the auction hoping to take advantage of relatively lower prices for C Block spectrum, were stunned to discover that prices outstripped expectations after only the first few rounds. While it is not clear what impact the Commission's efforts to encourage small business may eventually have, it is clear that, at least for the

⁹ NPRM, ¶ 23.

¹⁰ Revision of Part 22 of the Commissions Rules Governing the Public Mobile Services, Report and Order, CC Docket No. 92-115, 9 FCC Rcd. 6513 (1994) (Part 22 Rewrite Order).

moment, the auction environment is not hospitable to those without very significant resources.

Second, the Commission's selection of the MTA as the market area for geographic licensing disadvantages the small or mid-sized operator. Attachment 1 shows the service area of CCMS within the three MTAs in which it has operations: Chicago, St. Louis and Indianapolis. The Chicago MTA, which includes approximately 90% of CCMS' customer base, includes cities like Waukegan, Evanston, Chicago, Gary, Fort Wayne and Peoria, where the paging licenses are likely to be far more valuable than those for Mattoon, Champaign or Danville. In an MTA-based auction, CCMS would be bidding against companies willing to pay considerably more to preserve their interests in urban paging licenses than CCMS is able to pay to preserve its licenses in rural Central Illinois.

Third, the protections offered by the Commission for incumbent licensees are inadequate. There is no real opportunity for growth in terms of market expansion. Although the proposal anticipates that geographic licensees can voluntarily allow the expansion of the incumbent, it is highly unlikely that a geographic licensee, having paid a tidy sum for the MTA-wide licensee, will allow incumbent expansion without extracting some ransom. So, the incumbent's ability to grow will be held hostage to the whim of a competitor, with little incentive to cooperate except for a price.

Moreover, there is a significant danger that the geographic licensee will try to force the incumbent licensee out of the market. The Commission proposes that incumbents can hold their existing licenses, protected from interference. But, as a practical matter, that protection may not be very effective. A geographic licensee may intentionally encroach upon an incumbent's service area, e.g. through temporary power increases. If the geographic licensee, perhaps with few customers in the affected areas, can interfere with the signal of the incumbent, it can drive the incumbent's customers away. In that circumstance, the FCC, with a severely

depleted field staff and a plate full of other matters, will be of little or no help to an incumbent until it has lost a significant portion of its customer base.¹¹

Finally, the geographic licensing/auctions proposal threatens the viability of small and mid-sized incumbents because it signals that they should "sell out." By presuming that transfer to a geographic licensee of an incumbent's license is in the public interest, the Commission is presuming that big is better than little.¹² The NPRM creates both negative and positive incentives for incumbent licensees to depart the field. In this respect, the geographic licensing/auctions proposal is completely antithetical to the Communications Act provisions supporting small business interests in competitive bidding.¹³ Perhaps some, maybe even many incumbents, will want to sell out to the geographic licensee, but the Commission should not support policies that make it inevitable that all do.¹⁴

In sum, there does not appear to be a need for geographic licensing/auctions in the lower bands¹⁵, but there does appear to be a significant threat to small and mid-sized paging operators, if the proposal were adopted as it stands.

¹¹ Moreover, it is staggeringly expensive to pursue claims of deliberate interference without independent corroboration. An incumbent would have little incentive to complain to the FCC's depleted staff knowing that satisfaction might be years -- and many thousands of dollars -- away.

¹² The public interest has been served for many years by having a diversity of paging service providers, some big and some little. The smaller carriers often serve niche markets that the larger carriers ignore. For example, CCMS recently added a transmitter to provide improved service to the Sarah Bush Lincoln Health Center, a regional facility located outside of Mattoon. A larger carrier, with headquarters in Chicago, rather than in the community might not have been sensitive to the need for improved service. A relatively small service provider understands the needs of its relatively small customers.

¹³ See 47 U.S.C. § 309(j)(3)(B).

¹⁴ The Commission should certainly not support policies that make it likely, if not inevitable, that incumbents will be forced to sell at "distress sale" prices. We believe the NPRM would have this effect.

¹⁵ As the Commission is aware, it may not base a public interest finding on the expectation of Federal revenues from the use of competitive bidding. See 47 U.S.C. § 309(j)(7)(A).

B. If the Commission proceeds with the Geographic Licensing/Auctions Proposal, Some Modifications Must Be Made to Preserve Opportunities for Small and Mid-Sized Operators.

CCMS believes that the Commission should retain site-by-site licensing for lower band paging operations. If however, the Commission decides to go forward with its proposal, we believe some significant modifications must be made.

1. The Basic Trading Area should be the Geographic Market Area.

As discussed above, an MTA is not an appropriate geographic area if the Commission is concerned about the continued viability of those with shallow pockets but excellent service records. A better approach for assuring the viability of small and mid-sized operators is the Basic Trading Area (BTA). In the case of relatively rural BTAs, such as those in which CCMS provides service, it is less likely that a bidder with deep pockets will seek one of the lower band channels. Indeed, it is much less likely that an occasion of mutual exclusivity will arise.¹⁶ Further, selection of the MTA as the geographic licensing area will create pressure on cooperative interconnection networks to disband. These networks have facilitated customer roaming among service providers. An MTA geographic licensee will have no incentive to continue or establish such networks.

The Commission selected MTAs to be the geographic market area in part because it would be easier to hold auctions for channels within 50 MTAs than for channels within 487 BTAs. CCMS is sympathetic to the Commission's desire to reduce the administrative costs of conducting the auctions, but it should not be accomplished at the expense of small and mid-sized service operators. Further, we view it as extremely unlikely that there will be competing applications for many channels on a BTA basis. For example, of the nine BTAs where CCMS has paging

¹⁶ The NPRM is not clear on how the Commission would propose to avoid auctions when there are no mutually exclusive applications, but we assume that this is the Commission's intention.

operations, it is the exclusive user of 158.1 MHz in seven. If we sought to expand the CCMS service area within those BTAs, it is likely that we would not be faced with a competing use for that channel. We believe the circumstances to be similar for many other BTAs.

Therefore, the need for auctions would be diminished and the administrative burden lessened. Similarly, the burden could be reduced if the Commission were to encourage settlement opportunities among parties. CCMS understands that in similar circumstances involving 800 MHz Specialized Mobile Radio incumbent licensees, the Commission has received a proposal for pre-auction settlements that would encourage competing applicants to reach agreement to avoid auctions.¹⁷ We also understand that the Wireless Bureau is not predisposed against the proposal, which was agreed upon by diverse industry interests.¹⁸

2. Incumbents Should Be Given Some Opportunity for Growth.

Under the geographic licensing/auction proposal:

No incumbent licensee would be allowed to expand beyond its existing interfering contour and into the geographic licensee's territory, [. . .] without the consent of the geographic licensee.¹⁹

This means that the incumbent has no effective way of growing its system without permission from its competitor. Clearly, some latitude must be given an incumbent. Even the Commission asks comment on whether there are circumstances under which incumbents should be permitted to expand into unserved areas without the geographic licensees consent.²⁰

¹⁷ Communications Daily, March 6, 1996.

¹⁸ Land Mobile Radio News, March 1, 1996.

¹⁹ NPRM, ¶ 37.

²⁰ NPRM, ¶ 39.

CCMS believes that incumbents must be able to expand. Two proposals seem feasible. In the first, incumbents should be allowed to move into unserved areas after having given the geographic licensee fair opportunity to provide service. The meaning of "fair opportunity" may depend on a number of factors. For example, in the lower bands where there are few unserved areas, a high priority should be given to fill in "dead spots". Consequently, a fair opportunity may be only a matter of a few months.

The second approach would be to declare all contiguous unserved areas to be immediately and continually available to the incumbent.²¹ This has the benefit of bringing service to the public in the most expeditious way. Not only would an incumbent seek to provide service, but also the geographic licensee will seek to fill in unserved areas very quickly in order to protect its investment in the Trading Area.

Other options maybe available, but it is less the method used to allow growth that is important than it is the fact of growth itself. Without the ability to grow at all, incumbent paging operators will eventually wither and die.

3. Incumbent licensees must be given some effective protection against deliberate interference.

The Commission has recognized that the incumbents should be able to operate their systems free from interference from the co-channel geographic licensee. This principle needs some teeth. As it stands, the incumbents will be in danger of encroachment that cannot be remedied in a timely way. Without an adequate staff of FCC engineers available in the field to investigate interference complaints, it is unlikely that a deliberate interferor could be caught in the act.²²

²¹ The Commission could impose fill in requirements on the incumbent that would serve to show incumbent's good faith.

²² It may seem far fetched to imagine that instances of deliberate interference could occur. However, they can and do. Recently CCMS was the victim of intentional interference that was remedied only when CCMS sold its cellular interests to the interferor. CCMS is concerned that a similar problem could evolve in the paging arena.

Under these circumstances, it is important that the Commission take a holistic view of the problem. It may be desirable to divert some of the revenues derived from the auctions to enforcement activities, including support for field engineering and inspection personnel. In addition, the Commission could strengthen its complaint procedures to make them valuable to an incumbent whose service has been degraded by the deliberate interference of a competitor. It might for example, be helpful if the Commission established a policy awarding punitive (treble) damages to the complainant in a case of encroachment by deliberate interference. It should be noted that CCMS does not consider the complaint procedures to be an adequate remedy in these cases. Allegations of deliberate interference are difficult to prove, the procedures take too long and they favor the litigant with the deepest pockets.²³ However, there must be some effort made to create serious disincentives against encroachment. Otherwise, incumbent licensees will be extremely vulnerable.

III. CONCLUSION

Consolidated Communications Mobile Services opposes the proposals put forward by the Commission in this docket. We believe the Commission is creating licensing conflicts where none had existed and proposing solutions where none are needed.

Specifically, CCMS believes that the Commission should not adopt the geographic licensing/auctions proposals for lower band paging. If the Commission

²³ The FCC cannot award attorney's fees in complaint cases. See, e.g., Allnet v. Bell Atlantic, 8 FCC Rcd. 1347 (1993).

does adopt the geographic licensing/auctions proposal, it should modify the proposal in order to preserve opportunities for small to mid-sized paging operators.

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March 18, 1996

Attachment 1



Derived from Rand McNally Commercial Atlas, 1995 Edition.

CERTIFICATE OF SERVICE

I, Gail M. Mullen, do hereby certify that a copy of the foregoing
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first class United States mail, postage prepaid, or by hand delivery or facsimile where
indicated by an asterisk (*), this 18th day of March, 1996, to the following:

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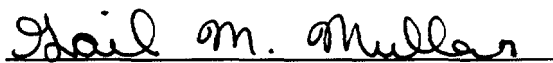
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